

Claim	Support
66	Page 5, lines 1-12; page 8, lines 20-24.
67	Page 14, line 6 to page 15, line 8.
68	Page 4, lines 26-31.
69	Page 5, lines 1-12.
70	Page 5, lines 1-12.
71	Page 5, lines 1-12.
72	Page 4, lines 1-4; page 7, lines 19-22.
73	Page 7, lines 23-26.
74	Page 8, lines 20-24.
75	Page 8, lines 25-29.
76	Page 8, lines 30-35.
77	Page 5, lines 1-12; page 8, lines 20-24.
78	Page 14, line 6 to page 15, line 8.
79	Page 4, lines 26-31.
80	Page 5, lines 1-12.
81	Page 5, lines 1-12.
82	Page 5, lines 1-12.
83	Page 4, lines 1-4; page 7, lines 19-22.
84	Page 7, lines 23-26.
85	Page 8, lines 20-24.
86	Page 8, lines 25-29.
87	Page 8, lines 30-35.

Response to Restriction Requirement

In Paper No. 23, the Examiner required restriction under 35 U.S.C. § 121. Specifically, the Office characterized the claims as drawn to four groups of claims as follows: Group I, Claims 31-36 drawn to the extent of a bacterial strain composition; Group II, Claims 31-36 drawn to the extent of a bacterial extract composition; Group III, Claims 43-48 and 61-63 drawn to a method of detecting antibodies with a bacterial strain; and Group IV, Claims 49-56, 59, 61 and 64-65 drawn to a method of detecting antibodies with a bacterial extract. Without acquiescing in the Office's characterization of the claims, applicants provisionally elect to prosecute Group II, Claims 31-36 drawn to the extent of a bacterial extract composition, with traverse.

Now-cancelled independent claims 31 and 32 recited a "Composition ... comprising a *H. Pylori* bacterial strain, or a bacterial extract of the said bacterial strain...." Newly added claims 66 and 77 recite "An *H. pylori* bacterial strain, or an extract of an *H. pylori* bacterial strain, wherein the *H. pylori* bacterial strain...." Clearly, any complete search of the bacterial extracts of the bacterial strains of the claims requires a search of the bacterial strains themselves. Accordingly, applicants respectfully submit that, in view of applicants' provisional election of Group II the Office must necessarily complete a thorough search of Group I during examination of this application. Thus, the examination of Groups I and II together does not place any additional burden upon the Office and this aspect of the restriction requirement should be withdrawn.

Applicants submit that the new claims 66-73 and 77-84 are directed to the subject matter of Groups I and II, while claims 74-76 and 85-87 relate to the subject matter of Group II, and that the presentation of these claims at this time is, therefore, proper.

Applicants also traverse the restriction requirement with respect to the Office's assertion that Groups III and IV are distinct from each other for the same reasons given above—namely, because a search of a method of detecting antibodies with a bacterial extract of a bacterial strain necessarily would entail a search of a method of detecting antibodies with the bacterial strain.

Applicants do not traverse the restriction requirement with respect to the Office's assertion that Groups III and IV are distinct from Groups I and II, but note that Groups I and II are product claims, while Groups III and IV are process claims. Should claims of

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

Groups I and/or II be allowed, applicants reserve the right to present process claims incorporating all limitations of allowed claims for rejoinder. (See MPEP 821.04 (8th Ed., August 2001).


The Office further alleges that the application contains claims directed to the following patentably distinct species: Bacterial strains and/or extracts of A) an *flbA* mutant, which does not express the hook protein(or anchoring protein) of the flagellum of *H. pylori*; B) obtained from strain N6 having deposit Accession No. NCIMB 40512; C) N6*flbA* having deposit Accession No. NCIMB 40747; D) wherein the *flbA* mutant also lacks the flagellum sheath; and E) wherein the *flbA* gene is SEQ ID NO:6. Without acquiescing in the Office's characterization of the claims, applicants elect the species "wherein the *flbA* gene is SEQ ID NO:6" for initial examination. Applicants submit that all of the claims are readable on this species.

Applicants courteously request the timely examination of this application and the allowance of the pending claims 66-81. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 30, 2003

By 
Kenneth J. Meyers
Reg. No. 25,146

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com